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MICHAEL RODAK, JR., C

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1972

No. _____

72-963

JOHN A. HUTTER, et al.	)	Appeal
	)	from the
Plaintiffs-Petitioners	)	United
	)	States
vs.	)	Court of
	)	Appeals
	)	Seventh
COOK COUNTY ILLINOIS, et al.	)	Circuit
	)	(No. 72-
Defendants-Respondents	)	1316)

PETITION FOR A WRIT OF CERTIORARI

TO THE

UNITED STATES COURT OF APPEALS

SEVENTH CIRCUIT

John A. Hutter
Attorney for Petitioners
3526 N. Marshfield Avenue
Chicago, Illinois 60657
GR 7-2259

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term A.D., 1972

No. _____

JOHN A. HUTTER, et al., Petitioners

vs.

COOK COUNTY ILLINOIS, Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, SEVENTH CIRCUIT

OPINIONS IN COURT BELOW

(a) There are no official or unofficial reports. The opinions of the Courts below is appended to this petition.

JURISDICTIONAL GROUNDS

(b) The jurisdiction of this Court is invoked according to U. S. Code Title 28, p. 1254(1) on the grounds that the decisions of the lower Courts have denied petitioners their Civil Rights and their further rights claimed under the Constitution and the Amendments thereto.

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(i) The judgment of the Court of Appeals Seventh Circuit was dated and entered October 10, 1972.

(ii) No petition for rehearing was filed.

(iii) Petitioners believe that the statutory provisions of the U. S. Code, Title 28, P. 1254(1) confers jurisdiction on this Court to review the judgment by a Writ of Certiorari.

QUESTIONS PRESENTED FOR REVIEW

(c) The question presented in the petition is whether a unit of State government, specifically, the County of Cook, Illinois, acting through its elected Assessor, P. J. Cullerton, may deliberately ignore the provisions of both the Federal and State Constitutions and enter into a conspiracy with certain taxpayers of that County so that they pay far less than their proper share of the taxes to the grave detriment of the class of taxpayers who are the petitioners to this Court; also whether the County and the Assessor are liable for damages caused this class of taxpayers.

CONSTITUTIONAL PROVISIONS INVOLVED

(d) Amendments to the Constitution of the United States pertaining to due process and equality before the law.

Also statutory provisions protecting the Civil Rights of persons residing within the jurisdiction of this Court secured by the Constitution of the United States. Article 9 of the Constitution of the State of Illinois which provides, "The General Assembly shall provide such revenue as may be needful, by levying a

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tax by valuation so that every person and corporation shall pay a tax in proportion to the valuation of his, her, or its property."

The 1968 Amendment to the Civil Rights Act provides in part as follows:

One of these Amendments prohibit two or more persons from conspiring to "injure, oppress, threaten or intimidate any citizens in the free exercise or enjoyment of any right or privilege secured by him by the Constitution or laws of the United States."

This conspiracy statute carries a stiff penalty of up to a ten year prison sentence and $10,000. fine.

The other section of the 1968 Amendment to the Civil Rights Act, was written specifically to persons who commit the same violation under color of State law.

When does the attorney general plan to act?

STATEMENT OF THE CASE

(a) The petitioners are citizens of the State of Illinois or citizens of other States who own real property in Illinois and are subject to taxation upon that property as provided by the Constitution of the State of Illinois.

The petitioners constitute a particular class of taxpayers who own apartment buildings in Cook County, Illinois; their apartment buildings are too large to be favored as residential taxpayers and too small to be favored as owners of high rise apartment and office buildings.

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Respondent Cullerton frankly admits that he is a law unto himself; that he has deliberately ignored the provisions of both the State and Federal Constitutions; that he has set up a system of assessing real property which he has found very helpful in perpetuating himself and others in political office. For example, by assessing residential property at 10-15-20% of fair market value, a great mass of enthusiastic voters retain him in office and at the other end of the spectrum, those fortunate, monied individuals whose high rise building like the towering John Hancock building, are assessed at 7½ - 20% of their fair market value, are understandably liberal with their campaign contributions. Thus, Mr. Cullerton enjoys the best of both worlds and has been reelected almost from time immemorial.

Alas for these poor petitioners that are caught in the middle and assessed at 50 to 100% of the fair market value of their apartment buildings; they have few votes and after the City of Chicago Building Department and Courts destroy their possibility of existing, and raze their building; also they have few funds available for political contributions.

Even lawyers who are sworn to uphold our Constitution get into the act and "affirm their confidence in the integrity and ability of Assessor P. J. Cullerton and urged his reelection because he has brazenly ignored the Constitutions and assessed single family homes at only 20 - 30% in fair market value!"

This patriotic group of lawyers continues to stress reasons for his reelection by stating, "assessments on business and

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commercial property average twice the percentage placed on single family homes." They are referring to this unfortunate class of persons who are the petitioners. They also state, "by judicious assessment of business and income producing property (the high rises assessed at 7½ - 20%) Assessor Cullerton has promoted a construction boom".... Yes, indeed and with practically no taxes to pay, they have been able to run out of business these petitioners, these saving industrious people who have provided private housing for a large part of the renters of Cook County before they were driven out of business and frequently onto the relief rolls. The Court is asked to take judicial notice of petitioner's special Exhibit I filed with this petition.

The bipartisan Lawyers Committee, who would give their lives to protect people's rights under the Constitution?? and who paid for the large ad (see Exhibit) include patriotic former burocrat Newton N. Minow and other like members of the committee.

What else needs be said? Every allegation of these petitioners is frankly admitted and the reply of the respondents is: So what?

BASIS FOR FEDERAL JURISDICTION

(f) The plaintiffs claim their Civil and Constitutional rights have been violated.

ARGUMENT SUPPORTING ALLOWANCE OF WRIT

(g) The Court of Appeals in their order of October 10, 1972 state on page 2 in affirming the dismissal of this action by the District Court, that "We affirm

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solely on the ground that application of the abstention doctrine was proper in this case."

The Court of Appeals on page 3 calls attention to the fact that Hutter challenged the Constitutionality of the tax assessed against him in Hutter v. Korzen No. 71. 1419, 40 U.S. LW 3596. This Court dismissed that appeal because a certain situation prevented Hutter from delivering his brief to Washington by the due date. Mr. Justice Douglas, in his dissent stated, "this Court in case after case, has in its discretion waived the strictures of that rule (Rule 13(1)), up to now it has indeed been more concerned with disposing of cases as justice may require rather than finding technical ways to avoid decision of knotty questions." This case applied to Hutter's 1968 taxes; 1969 taxes are at present before the Illinois Supreme Court and the problem will again be presented to the Supreme Court of the United States for solution within a few months.

The Court of Appeals cites several cases; Zwickler v. Kosta 389 U.S. 241, 255 (1967); Louisiana Power & Light Co. v. City of Thibodaux 360 U.S. 25 (1958); Martin v. Creasy 360 U.S. 219, 224 (1958); and Toomer v. Witsell 334 U.S. 385, 387, 392 (1947).

All of these cases are strictly tax cases. All were decided before the Civil Rights Act of 1968.

Hutter stated in his complaint in averment No. 1, "That the jurisdiction of this Honorable Court is invoked pursuant to the provisions of Title 28, Section 1331 and other sections applicable.

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This includes the Civil Rights Act of 1968. The petitioners are asking this Court to protect these and other Constitutional rights of this class of injured citizens from the flagrant violation of those rights by the respondents.

This case is similar to Hutter V. Tanck No. 72-348 now pending before this Court.

In neither one of these cases are taxes directly involved. In both cases damages are demanded for the wanton violation of the petitioners Civil and Constitutional rights.

Details of Hutter's assessments are to be found in his complaint in Appendix.

The Court is asked to grant the Writ of Certiorari so that this large class of abused citizens may have justice.

Respectfully submitted,

John A. Hutter
Attorney for the Petitioners

* * * * * * * * * * *

APPENDIX

NOTICE OF APPEAL

Notice is hereby given that John A. Hutter, et al., plaintiffs, hereby appeal to the United States Court of Appeals for the Seventh Circuit from the order and

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final judgment entered the 28th of February, 1972.

John A. Hutter
Attorney for plaintiffs-
Appellants
3526 N. Marshfield Ave.
Chicago, Illinois 60657

COMPLAINT

Now come the plaintiffs, John A. Hutter, Clara N. Hutter, and the class of taxpayers who own apartment buildings in Cook County, by their attorney John A. Hutter and complain of the defendants, the County of Cook, Illinois, and its Assessor P. J. Cullerton, as follows and allege and claim:

1. That the jurisdiction of this Honorable Court is invoked pursuant to the provisions of Title 28, Section 1331 and other sections applicable.

2. That the matter in controversy exceeds Ten Thousand Dollars ($10,000.) exclusive of Interest and costs.

3. That the plaintiffs John A. Hutter and Clara N. Hutter, own an apartment building at 3526-28 North Marshfield Avenue, Chicago, Illinois and the class of taxpayers that are joint plaintiffs own apartment buildings in Cook County, Illinois.

4. That the defendant County of Cook, Illinois, and its Assessor, P. J. Cullerton, are responsible for assessing the real estate owned in Cook County by the plaintiffs.

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5. That the United States Constitution Amendment 14 protects the Civil Rights of the plaintiffs and requires that all persons residing in the United States are entitled to the equal protection of the law.

6. That the Constitution of the State of Illinois, Article 9, states, "The General Assembly shall provide such revenue as may be needful, by levying a tax by valuation so that every person and corporation shall pay a tax in proportion to the valuation of his, her, or its property."

7. That the government of the County through the wilful malfeasance of its duly elected assessor P. J. Cullerton, wilfully assessed taxes against the real property of plaintiffs contrary to the provisions of both the United States Constitution and the Constitution of the State of Illinois.

8. That the County, through its Assessor P. J. Cullerton, assessed the property of owners of residential property at 15-20% of its fair market value in the same block where the apartment building of plaintiffs John A. Hutter and Clara N. Hutter was assessed at 70% of its fair market value. This fraudulent basis of assessment contrary to Constitution requirements of equality prevails throughout the County of Cook.

9. That the County through its Assessor P. J. Cullerton, assesses the property of owners of high rise office buildings and apartment buildings at a rate of from 7.5% (John Hancock building) to 25%.

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10. That the equalization factor of some 50% added to the assessed value further adds to the unbearable discrimination of the class of property owners of average apartment houses.

11. That this fraudulent taxes assessed against this class of property owners has caused many of them to lose their property.

12. That in the case of John A. and Clara N. Hutter, as an example, the taxes fraudulently assesses approach the gross income of the property in amount.

13. That although this confiscatory assessment was brought to the attention of the assessor, no relief was given.

14. That the years involved are 1968, 1969, 1970, 1971 and any other years for which the Court may grant relief.

15. That the real and actual damages involved herein are over one half billion dollars ($500,000,000.00).

16. That the plaintiffs are also entitled to exemplary and punitive damages of fifty percent in addition to their real and actual damages.

WHEREFORE THE PLAINTIFFS PRAY that this Court will grant them justice.

* * * * *

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Name of Presiding Judge, Hon. Hubert L. Will
Cause No. 71 C 2984 Date. Feb. 9, 1972
Title of Cause: John A. Hutter, et al., vs. Cook County, Illinois and P. J. Cullerton, Assessor

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Brief Statement of Motion:
Names and address of moving counsel:
Representing:
Names and address of other counsel entitled to notice and names of parties they represent.
Reserve space below for notations by minute clerk:
Pursuant to Court's memorandum opinion this day filed,
Order defendants' motion to dismiss the complaint granted.
Order complaint dismissed.

* * * * * * * * *

MEMORANDUM OPINION

The complaint in this lawsuit purports to state a class action by the plaintiffs as representatives of the class of taxpayers who own apartment buildings in Cook County. Asserting jurisdiction under 28 U.S.C. §1331 and the Fourteenth Amendment, the plaintiffs allege malfeasance and discrimination on the part of the Assessor of Cook County in fraudulently assessing taxes against the plaintiffs and the other class members in such a manner as to violate the equal protection clause of the Fourteenth Amendment. Specifically, they allege that the Assessor assesses high rise office and apartment buildings at a rate of their fair market value significantly lower than the rate at which the plaintiffs' property is assessed and that other residential property located on the same block as the building they own (apparently of a similar nature) is likewise assessed at a much lower rate. The defendants move to dismiss the complaint.

The basis upon which the defendants move to dismiss the complaint is Section

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1341 of Title 28 of the United States Code. That section states:

> The district Courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the Courts of such State.

The defendants assert that an efficient and speedy remedy for challenging any real property tax for any year for any reason exists pursuant to Ill.Rev.State. Ch. 120, §675, and that we therefore, do not possess jurisdiction over the suit. The Illinois statute states in pertinent part:

> Current taxes on real property shall be payable in 2 equal installments....
>
> If any person desires to object...to all or any part of a real property tax for any year, for any reason other than that the real estate is not subject to taxation, he shall first pay all of the tax installments due, and such payment shall be accompanied by a writing (in a specified form)...
>
> The person paying real estate taxes under protest shall appear in the next application for judgment and order of sale and object to the taxes in relation to which the protest is made, and upon his failure so to do, the protest shall be waived, and judgment and order of sale entered for any unpaid balance of such taxes...
>
> In all counties, when the taxpayer appears and files objections, the

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> court shall, after first determining that due notice, if required, has given to the tax levying unit, hear and determine the matter according to the right of the case and enter judgment for any part of the taxes, or order a refund of any part of the taxes, so paid under protest. Appeals shall lie from such orders of the Court as in other cases of objection to judgment and order of sale for taxes....

We first note that the plaintiffs' suit is not, strictly speaking, a suit to "enjoin, suspend or restrain the assessment levy or collection" of any taxes. Rather, the plaintiffs merely seek damages for themselves and the class that they represent for the years 1968, 1969, 1970, 1971, and for any other years for which the Court may grant relief. Accordingly, the defendants' bald assertion that the suit "is actually one to enjoin the assessment, levy, or collection of real estate taxes" within the purview of the restrictive language of §1341 cannot stand without further analysis of the history of that statute.

Section 1341 of Title 28 of the United States Code is the codification of the practice of the Federal equity Courts to deny relief from the collection of taxes by State authorities when a remedy existed in the State Courts. Speaking in regard to this equity practice, the Supreme Court stated in Matthew v. Rodgers, 284 U.S. 521, 525-526 (1932).

> The scrupulous regard for the rightful independence of State governments which should at all times actuate the Federal Courts and a proper reluctance

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> to interfere by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted Federal right may be preserved without it. Whenever the question has been presented, this Court has uniformly held that the mere illegality or unconstitutionality of a State or Municipal tax is not in itself a ground for equitable relief in the Courts of the United States. If the remedy at law is plain, adequate, and complete, the aggrieved party is left to that remedy in the State Courts, from which the cause may be brought to this Court for review if any Federal question be involved.

It has similarly been held that where there is available an efficient remedy in the State tax agencies and/or Courts whereby a taxpayer can contest the imposition of a discriminatory tax, Federal Courts are without jurisdiction to entertain a suit seeking relief, no matter how the suit is structured or denominated. Great Lakes Dredge & Dock Co. v. Huffman, 319 U.S. 292 (1943); Hackensack Water Co. v. North Bergen Township, 103 F.Supp. 133 (D.N.J. 1952), aff'd 200 F.2d 313 (3rd Cir. 1952); cf., Hillsborough Township v. Cromwell, 326 U.S. 620 (1946). We conclude from a reading of these cases, plus the fact that §1341 is not restricted to suits seeking only equitable relief, that the doctrine of comity codified in this section prohibits a narrow reading thereof and that this suit, therefore, must be deemed to fall within its restrictions. Accordingly, we must determine if the Illinois statute quoted above would provide the plaintiffs with a plain and efficient remedy.

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A review of the Illinois tax statutes relating to the protesting of assessed taxes leads the Court to the conclusion that the plaintiffs indeed did possess an adequate and efficient remedy in the State Courts, which apparently they have chosen to bypass rather than following the prescribed form of lodging their protest at the time that they paid their taxes. As we read the plaintiffs' brief in opposition to the motion to dismiss, they are not actually contending that they are without a plain and efficient remedy in the State Courts but rather are asserting that the requirement that they pay their taxes as a condition precedent to lodging their Constitutional complaint against such taxes is, in and of itself, a violation of the Fourteenth Amendment.

Although we are uncertain as to the relationship of the Constitutionality of the Illinois statute to the issue of whether it is speedy and efficient, we believe that even if such issue is relevant, the plaintiffs' argument is not valid. They cite no authority for the proposition that the Constitution is violated by a State's requiring a citizen who believes his tax is improper to pay his tax prior to having his challenge heard. Nor can we even imagine the existence of such authority. Logic dictates that a government which relies significantly upon the property tax as the major source of its revenues must be allowed to continue to collect its taxes even though a challenge has been made either to the tax itself or to its particular application. If the contrary were true, a local government could be brought to a total standstill merely because many of its citizens believed, erroneously or otherwise, that the taxes assessed were improper. The degree of chaos that would result from

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such set of procedures which the plaintiffs claim are Constitutionally required could clearly lead to the total breakdown of all local revenue collections. We conclude that such a system is not Constitutionally required and that Ill.Rev.Stat., Ch. 120, §675, is not unconstitutional. We further conclude that the plaintiffs possessed a plain, speedy, and efficient remedy in the Courts of Illinois in which they could have asserted their claims. Accordingly, the complaint must be dismissed pursuant to 28 U.S.C. §1341.

Even if the jurisdictional restrictions of §1341 do not apply to this suit because a complaint for damages may not technically be deemed as seeking to "enjoin, suspend or restrain the assessment, levy, or collection" of a State tax, we nevertheless believe that the complaint must be dismissed. Faced with a suit very similar to the one involved herein, the Third Circuit has concluded that when a taxpayer possesses an adewuate remedy in the State Courts for challenging taxes levied against him, his failure to assert the grounds for challenge in the State proceedings renders stale any subsequent suit in the Federal Courts based upon those grounds. Hackensack Water Co. v. North Bergen, 200 F.2d 313 (3rd Cir. 1952). In that case, the taxpayer argued that it did not have an adequate State remedy to assert its particular ground for challenging its tax assessment and the personal property taxes assessed for the years 1940 through 1948 were unconstitutional. After concluding that the taxpayer did possess an adequate State remedy and that it had never made any attempt to raise in the State proceedings the type of claim which it was asserting in Federal Court (although it had raised other grounds in the State

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Court), the Third Circuit concluded that the taxpayer's delay in asserting the alleged unconstitutionality of the tax caused its claims to become stale. The Court stated:

> The above facts convincingly indicate that this action for refund is stale with respect to the balance of the years in dispute. The assessments for those years were finally determined on the single question ever properly before the State Courts. It is too late for this taxpayer to now attempt to impeach their validity. Relying upon them, commitments have been incurred and paid by Township, County and State agencies concerned. The (taxpayer) must be considered to have waived whatever right it possessed to object on Constitutional grounds....
>
> To permit the type of recovery sought by (the taxpayer) under the circumstances here revealed would seriously and capriciously endanger the ordinary functioning of government agencies. 200 F.2d at 317.

We believe that the Third Circuit's reasoning is persuasive and that the taxpayers herein are precluded from challenging in this Court the Constitutionality of taxes which they have paid and which they never challenged in the State Courts. To allow the plaintiffs to assert their stale claims would be to encourage the bypassing of a State system designed specifically to handle such challenges and the disruption of the orderly processes and functioning of State and Municipal governments. Accordingly, the plaintiffs' complaint must be dismissed.

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Finally, even assuming that 28 U.S.C. §1341 does not preclude the taxpayers from bringing this suit and that they could not be legally deemed to have waived their claims by bypassing the authorized State procedures for challenging taxes for any reason, we would nevertheless believe that this Court should abstain from exercising whatever jurisdiction we do possess because of the nature of the claim asserted in the complaint. The complaint challenges the heart of the financing system of a State subdivision. Before the Federal Courts should interfere with this function so peculiarly oriented to the very existence of a unit of State government, we believe that the Courts of the State should be presented with the opportunity to at least hear and rule upon the contentions raised. Even if we have jurisdiction to rule upon the plaintiffs' claims on the merits after the State Courts first have been presented with this opportunity, to do so now in the type of lawsuit involved herein would upset the delicate balance of comity long recognized by Federal Courts and by the Congress in 28 U.S.C. §1341. Thus, even if the restrictions of §1341 do not technically apply to this suit, the rationale behind that statute convinces us to refrain from exercising such jurisdiction as we might then possess prior to any proper attempts on the part of the plaintiffs to seek resolution of these issues in the State Courts, either through a protest properly lodged with the payment of taxes or by a suit in theCircuit Court challenging the Constitutionality of the practices herein complained of.

An appropriate order will enter granting the defendants' motion to dismiss the complaint.

(signed) Hubert Will,
United States District Judge

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UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

October 10, 1972
Before
Hon. Thomas E. Fairchild, Circuit Judge
Hon. Walter J. Cummings, Circuit Judge
Hon. John Paul Stevens, Circuit Judge

JOHN A. HUTTER, et al.,
Plaintiffs-Appellants

No. 72-1316 vs.
COOK COUNTY, ILLINOIS, P.J. CULLERTON, ASSESSOR,
Defendants-Appellees

Appeal from the United States District Court for the Northern District of Illinois Eastern Division (71 C 2984) Judge Will

ORDER

This is a Federal question (28 U.S.C. §1331(a)) involving a suit which seeks damages of one-half billion dollars and punitive damages for defendants' alleged violation of plaintiffs Constitutional right to equal protection. The district Court dismissed the complaint. We affirm.

Plaintiffs sue as owners of property in Chicago and in behalf of all similarly situated property owners. They assert that P. J. Cullerton, Cook County Assessor, violated their right to equal protection by wilfully assessing the taxes on their property at a rate of 70% of its fair market value while arbitrarily assessing similar properties at rates of 15-20% of fair market value.

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Defendants moved to dismiss upon various grounds. On February 9, 1972 the district Court dismissed upon the following stated grounds: (1) that the suit was barred by 28 U.S.C. §1341 which the district Court concluded was "not restricted to suits seeking only equitable relief, that the doctrine of comity codified in this section prohibits a narrow reading thereof and that this suit, therefore, must be deemed to fall within its restrictions;" and (2) even if §1341 did not apply because this suit was technically one for damages rather than a suit in equity to "enjoin, suspend or restrain," nevertheless, the taxpayer's failure to raise his Constitutional argument concerning equal protection in a prior State Court proceeding constituted a waiver which precluded this suit. Finally (3) assuming that §1341 did not constitute a bar and that there was no waiver, nevertheless the Federal Court should abstain until the State Courts are given an opportunity to decide the question.

The plaintiffs-appellants and the defendants-appellees, Cook County, Illinois, et al. have filed briefs with this Court. On September 19, 1972, the latter moved pursuant to Circuit Rule 22 for affirmance without oral argument.

We express no opinion with regard to the applicability of §1341 if Title 28; nor do we believe that discussion of waiver of Constitutional rights is appropriate. We affirm solely on the ground that application of the abstention doctrine was proper in this case.

As Mr. Justice Harlan indicates

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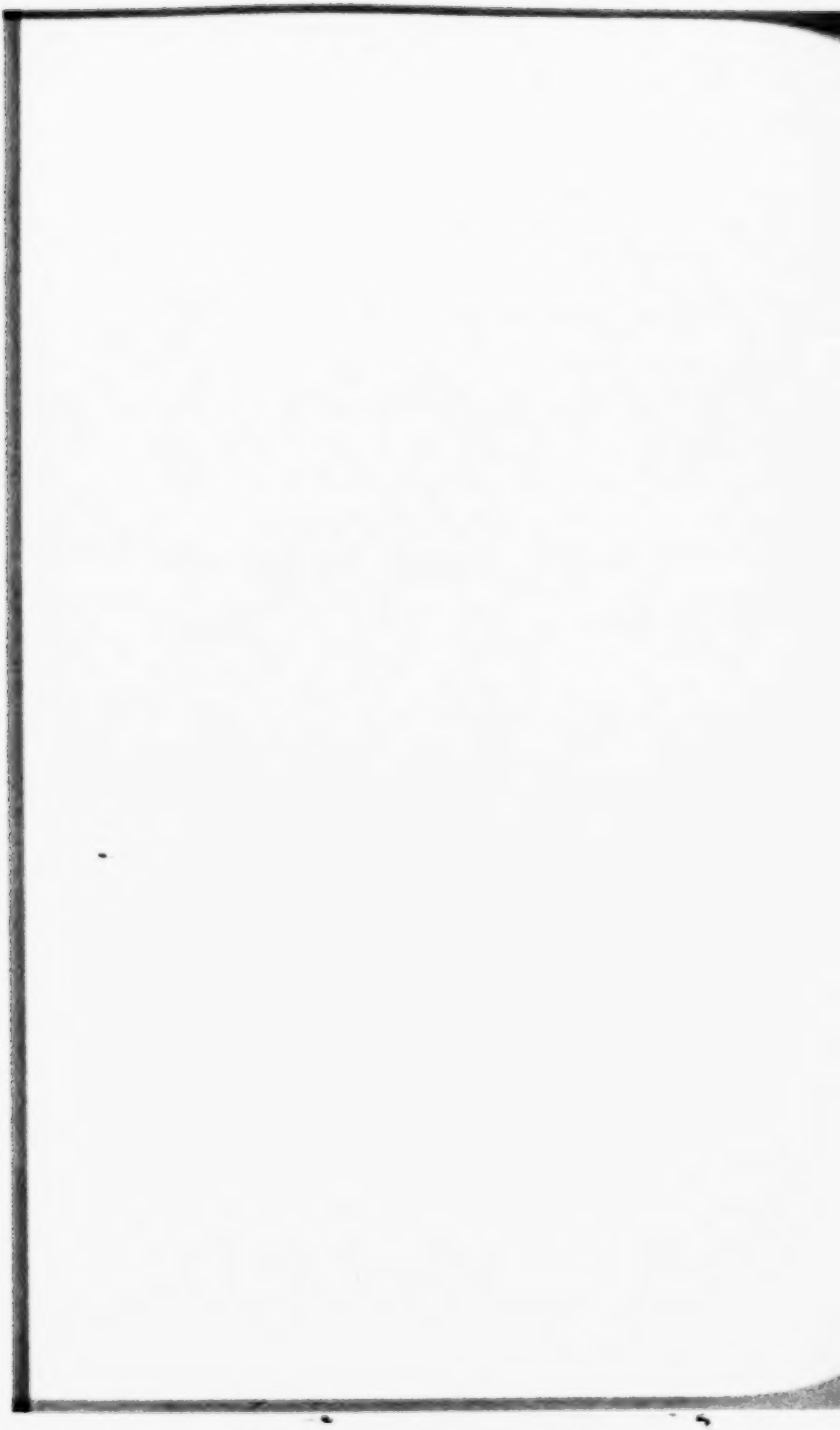
in his concurring opinion in Zwickler v. Koota, 389 U.S. 241, 255 (1967) abstention is appropriate where the order to repair to the State Court would avoid the hazard of unsettling some delicate balance in the area of Federal-State relationships. See Louisiana Power & Light Co. v. City of Thibodaux, 360 U.S. 25, 32 (1958). While Zwickler v. Koota, supra at n.4 suggests that the better practice in a case raising a Federal Constitutional claim is for the district Court to retain jurisdiction, rather than to dismiss, there is ample authority indicating that under the circumstances presented here dismissal is proper.

In Martin v. Creasy, 360 U.S. 219 (1958), the Court held that a three judge Court convened to determine the scope of a Pennsylvania statute should have "declined to adjudicate this controversy" because of the potential for (1) "unseemly conflict between two sovereignties," (2) "the unnecessary impairment of State functions," and (3) "the premature determination of Constitutional questions." Moreover, in Toomer v. Witsell, 334 U.S. 385, 387-392 (1947) the Court upheld the dismissal of suit brought in a Federal district Court because: "(a)nother... statute...permits any taxpayer who believes a tax to be illegal for any cause to pay the tax under protest and then sue in a State Court to recover amounts so paid."

Illinois' Revenue Act of 1939, (Ill. Rev. Stat., Ch. 120, §§482-811), provides a complex method of property tax assessment and collection. Property owners such as the plaintiff are afforded an opportunity to complain of assessment before a tax is levied. See Ill.Rev.Stat. Ch. 120 §598 (Cum. Supp. 1972). After a



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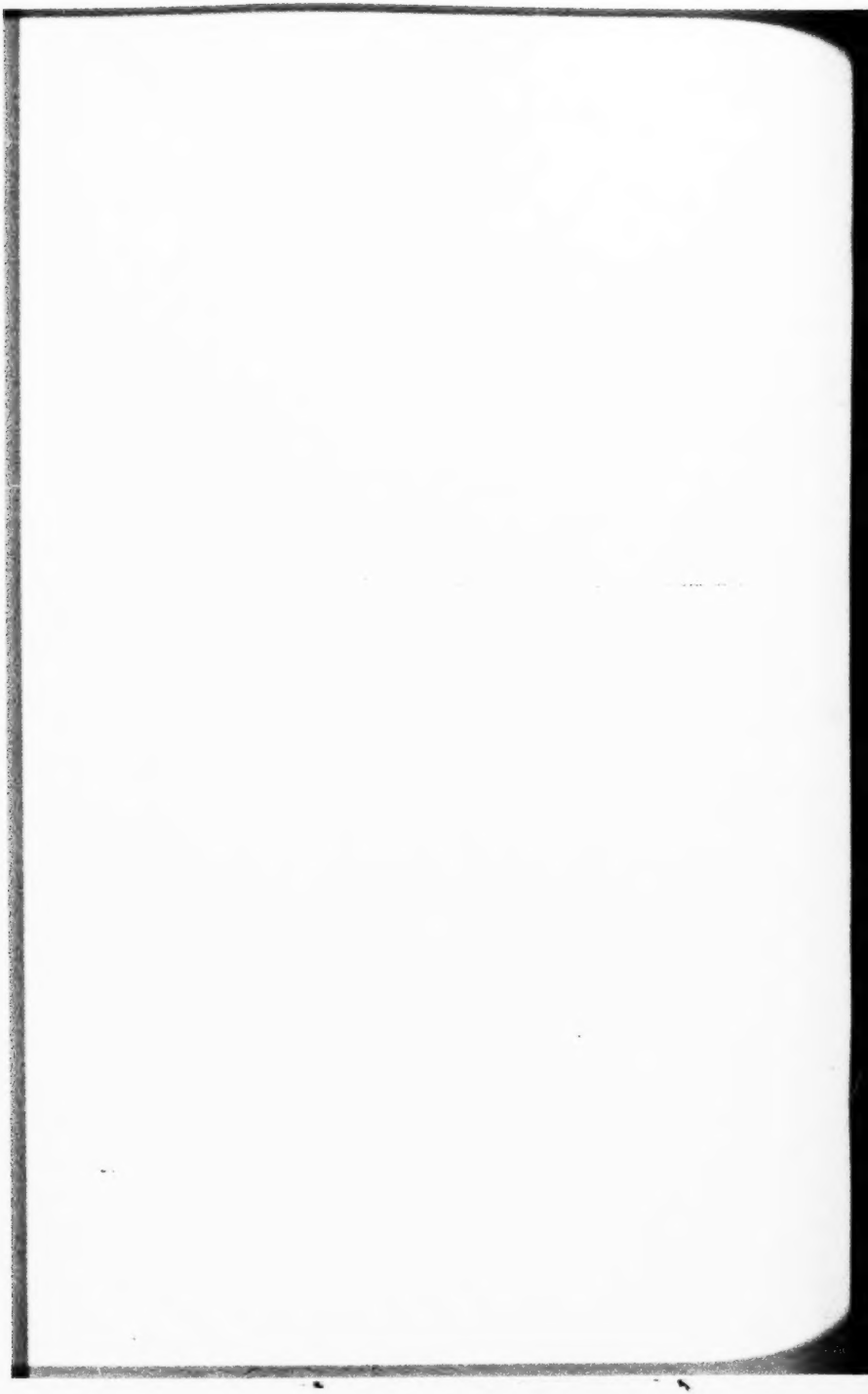
tax is owing a further method of challenging the assessment is afforded by paying taxes under protest. See Ill. Rev. Stat. Ch. 120, §675. The record in this appeal indicates that the Mr. Hutter has also filed a challenge to the Illinois Revenue Act in Illinois Courts without paying taxes due. The challenge is currently, pending before the United States Supreme Court. Hutter v. Korzen, No. 71-1419 U.S. L.W. 3596.

In addition to the availability to State statutory remedies it is apparent that suits challenging method and equality of assessment under the equal protection clause of the Federal Constitution have been considered in the Illinois State Courts, and there is no discernible pattern of prejudice against the taxpayer. See e.g. Peoples Gas Light and Coke Co. vs. Struckert 286 Ill. 164, People v. Orvis, 301, Ill. 350, Bestor v. McDonough, 348 Ill. 624, and People v. Pickard, 377 Ill. 610.

The decision of the Federal District Court is affirmed.



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-963

JOHN A. HUTTER, et al.,

Petitioner,

VS.

THE COUNTY OF COOK, a body politic and corporate, et al.,

Respondents.

On Appeal From The United States Court of Appeals, Seventh Circuit No. 72-1316

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ISSUES

Due to the inadequacy of the Petitioner's, Hutter (hereafter Hutter), statement of the issues in this case the Respondent, the COUNTY OF COOK (hereafter Cook County) presents the following as the issue in the case:

Whether the decision of the United States Court of Appeals affirming the United States District Court's decision dismissing the complaint was a proper application of the doctrine of abstention?

STATEMENT OF CASE

Hutter filed this original action in the United States District Court for the Northern District of Illinois alleging a violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution. The jurisdiction of the federal courts was alleged under 28 U.S.C. §1331. The basis for the violation was alleged to be the application of a percentage rate in the assessment of his real property greatly in excess of the percentage rate used for other realty.

The suit involved the tax assessments for the years 1968 through and including 1971. Hutter alleged the suit was a class action and claimed one half billion dollars ($500,000,000.00) damages.

Cook County moved to dismiss the complaint on several grounds. The district court dismissed based upon the following: (1) the suit was barred by 28 U.S.C. §1341 which the Court stated was not restricted to suits seeking only equitable relief, (2) that the failure by Hutter to bring the action in the state court rendered the suit stale and thus waived constitutional objections, and (3) that the court should abstain from deciding this case absent an action in the state courts. The United States Court of Appeals for the Seventh Circuit affirmed the decision solely on the basis of proper application of the doctrine of abstention. From this decision Hutter has filed the present Petition for a Writ of Certiorari.

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ARGUMENT

The Decision Of The United State's Court Of Appeals Affirming The Decision Of The District Court Dismissing The Complaint Was A Proper Application Of The Doctrine Of Abstention.

The United State's Court of Appeals for the Seventh Circuit in its opinion in the case *Hutter* v. *Cook County*, No. 72-1316 stated:

> We express no opinion with regard to the applicability of §1341 of title 28; nor do we believe that discussion of waiver of constitutional rights is appropriate. We affirm solely on the ground that application of the abstention doctrine was proper in this case. (See order attached as exhibit A.)

In view of that statement, the only issue directly before the court in this case is whether the Court of Appeals erred in finding that the District Court's application of the doctrine of abstention was proper. It is Cook County's position that there is ample authority supporting the use of the doctrine in the present case and that its use was proper.

Basically, Hutter is challenging Illinois' Revenue Act of 1939 (Ill. Rev. Stat., Chap. 120, Secs. 482-811) which provides the various local governments in Illinois with the economic means of supporting themselves through taxation of realty. This Act is a complex scheme providing for the assessment, levy, and collection of property taxes by the various counties in the state. It is the primary source of funds for local government within the state.

There are numerous provisions at each step in the taxing system for the taxpayer to challenge the amount of the tax. There is the opportunity to revise the assessment with the county assessor (Ill. Rev. Stats., Ch. 120, Sec. 579) . The taxpayer can challenge his assessment before the Board of Appeals (Ill. Rev. Stats., Ch. 120, Secs 593-606). In addition, he can challenge the tax in the Circuit Court of the county wherein the property is located by payment under protest (Ill. Rev. Stats., Ch. 120, Sec. 675). Beyond the purely statutory remedies provided for within the tax system itself, the taxpayer also has available an action in Chancery requesting the extraordinary remedies suitable to that court. Failing these possibilities post judgment relief may also be available (Ill. Rev. Stats., Ch. 110, Sec. 72). As is readily seen the system embodied by the Revenue Act of 1939 provides many avenues of possible relief to the taxpayer. At the same time, it helps to assure the governmental unit that adequate revenue will be forthcoming at designated periods of time.

This is the system which Hutter is attempting the challenge in the Federal Courts. He alleges to bring this action on behalf of himself and all others similarly situated. He alleges a violation of his right to equal protection under the law. He has, however, ignored the very statutory provisions designed to assure him of his right to equal protection and due process.

The doctrine of abstention has had a varied history in the Federal Courts. During that history, however, it has invariably been wed to the principle of comity. The U.S. District Court Judge Hubert Will recognized this when he wrote his opinion abstaining from exercising jurisdiction in the present case. He stated at page 9 of his memorandum opinion:

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> "Even if we have jurisdiction to rule upon the plaintiffs' claims on the merits after the state courts first have ben presented with this opportunity, to do so now in the type of lawsuit involved herein would upset the delicate balance of comity long recognized by Federal Courts and by Congress in 28 U.S.C. §1341. Thus, even if the restrictions of Section 1341 do not technically apply to this suit, the rationale behind that statute convinces us to refrain from exercising such jurisdiction as we might then possess prior to any proper attempts on the part of the plaintiffs to seek resolution of these issues in the state courts, ..." (See copy attached as Exhibit B).

Implicit in Judge Wills' statement is the understanding that:

> "Few public interests have a higher claim upon the discretion of a federal chancellor than the avoidance of needless friction with state policies . . . . These cases reflect a doctrine of abstention appropriate to our federal system whereby the federal courts exercising a wise discretion, restrain their authority because of scrupulous regard for the rightful independence of the state governments and for the smooth, working of the federal judiciary. *Burford* v. *Sun Oil Co.*, 319 U S 315, 332 (1943)."

Decisions by this Court have designated three basic criteria for application of the doctrine. Any one of these factors renders abstention within the discretion of the District Court. In *Martin* v. *Creasy*, 360 U.S. 219 (1958) at page 224, this Court stated most succinctly:

> "Reflected among the concerns which have traditionally counseled a federal court to stay its hand are the desirability of avoiding unseemly conflict between two sovereignties, the unnecessary impairment of state functions, and the premature determination of constitutional questions."

The present case reflects, at a minimum, the first two of these criteria. First, it presents a conflict between the state and federal courts in that a state procedure for judicial review is circumvented by federal court review. Second, federal review of such cases allows a taxpayer to frustrate the state statutory provisions requiring payment of the taxes under protest as an element of review. Such circumvention clearly impairs the functioning of the state procedure outlined above.

In *Great Lakes Dredge and Dock Co.* v. *Huffman*, 319 U.S. 293 (1943) this Court was faced with a suit very similar to the present one. The suit was brought in the Federal District Court of Louisiana, challenging a Louisiana tax which was alleged to be unconstitutional as it was applied to the plaintiff. The Louisiana statute provided a method of challenging its taxes which required payment of the tax followed by a suit for its recovery. This court affirmed the decision of the lower court dismissing the action stating:

> ". . . it is the court's duty to withhold relief, when as in the present case, it appears that the state legislature has provided that on payment of any challenged tax to the appropriate state officer, the taxpayer may maintain a suit to recover it back.
>
> . . . This affords an adequate remedy to the taxpayer, and at the same time leaves undisturbed the state's administration of its taxes." *Supra* at pages 300, 301.

Additional authority for abstention in such cases can be found in this Court's decision in *Toomer* v. *Witsell*, 334 U.S. 385 (1947).

The present suit involves similar facts in that the Illinois tax system provides for payment of the tax as-

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sessed and filing of an action to recover the amount alleged to be due the taxpayer. Hutter also seeks a declaration that the assessment provisions are unconstitutional as applied to him. It differs only in that Hutter seeks damages in addition to the declaratory judgment. The authorities cited above show clearly that the doctrine of abstention was properly applied by both the District Court and the Court of Appeals.

In the Supreme Court Rules, 28 U.S.C. Rule 19, this Court has set out the basic rationale which it will consider in determining review on a writ of certiorari. That rule states that there must be some "speeal and important reasons" for granting review. Such reasons are not present in this case. There is here no decision involving conflict between the various Circuits. Nor has a state question been decided in conflict with state law or federal law. The case has certainly not decided a federal question in conflict with decisions of this court. Hutter in his petition has not even alleged any of the above factors to induce this Court to review the case. In fact, he fails to see the issue. He is, even now, before this Court, stating that the issue is the alleged discrimination in rates of assessment. This issue has never been decided by the District Court or the Court of Appeals. The issue can only be whether the application of the doctrine of abstention was proper in this case.

Even a detailed reading of Hutter's Petition for Writ of Certiorari uncovers no rationale for this Court to grant review. The petition consists primarily of blatant accusations against public officials in Cook County, Illinois. There is no reasoning to a logical conclusion. Nor is there a legal argument presented. It is, further, noted that

Hutter cites not a single authority in support of any allegation in his petition. This Court states in its Rules:

> Briefs must be compact, logically arranged with proper headings, concise, and free from burdensome, irrelevant immaterial and scandalous matter. Briefs not complying with this paragraph, may be disregarded and stricken by the court. 28 U.S.C. Rule 40 (5).

It is suggested that Hutter's petition is appropriate matter for the above action.

CONCLUSION

Hutter is challenging the tax system employed by the State of Illinois on the basis that it discriminates against him and members of the class he purports to represent. Said tax system is designed to provide adequate finances for local government at regular iptervals. But at the same time, it has built-in administrative remedies for taxpayers to challenge the assessment of their property. In addition, it provides for judicial remedy via a suit to recover the paid tax. Any constitutional issues may be raised, argued, and preserved for appeal. An appeal may be carried through to the highest state court and from there appeal can be made to this Court. Post judgment relief is also available to the taxpayer when such relief is appropriate. In view of the above, it can only be concluded that the State of Illinois provides an adequate remedy to the taxpayer.

Based upon this, the application of the doctrine of abstention is proper. This Court has set out three factors in its opinions any one of which render abstention within the discretion of the district courts. Two of those factors

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are present in this case. They are, conflict between two sovereignties and interference with complex state schemes. This Court has held that when the above factors are present and there is an adequate state remedy the federal courts may apply the doctrine of abstention. The application of the doctrine was thus proper in the present case.

For the above stated reasons the County of Cook prays this Honorable Court to enter an order denying Hutter's Petition for Writ of Certiorari.

Respectfully submitted,

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Attorney for Respondent.

SHELDON GARDNER,
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PAUL P. BIEBEL, JR.,
DONALD P. SMITH,
Assistant State's Attorneys,
Of Counsel.

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EXHIBIT "A"

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

October 10, 1972

Before

Hon. THOMAS E. FAIRCHILD, Circuit Judge
Hon. WALTER J. CUMMINGS, Circuit Judge
Hon. JOHN PAUL STEVENS, Circuit Judge

JOHN A. HUTTER, et al., Plaintiffs-Appellants, vs. No. 72-1316 COOK COUNTY, ILLINOIS, P. J. CULLERTON, ASSESSOR, Defendants-Appellees.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. (71 C 2984) Judge Will

ORDER

This is a Federal question (28 U.S.C. § 1331(a)) involving a suit which seeks damages of one-half billion dollars and punitive damages for defendants' alleged violation of plaintiffs' Constitutional right to equal protection. The district court dismissed the complaint. We affirm.

Plaintiffs sue as owners of property in Chicago and in behalf of all similarly situated property owners. They

assert that P. J. Cullerton, Cook County Assessor, violated their right to equal protection by willfully assessing the taxes on their property at a rate of 70% of its fair market value while arbitrarily assessing similar properties at rates of 15–20% of fair market value.

Defendants moved to dismiss upon various grounds. On February 9, 1972 the district court dismissed upon the following stated grounds: (1) that the suit was barred by 28 U.S.C. § 1341 which the district court concluded was "not restricted to suits seeking only equitable relief, that the doctrine of comity codified in this section prohibits a narrow reading thereof and that this suit, therefore, must be deemed to fall within its restrictions;" and (2) even if § 1341 did not apply because this suit was technically one for damages rather than a suit in equity to "enjoin, suspend or restrain," nevertheless, the taxpayer's failure to raise his Constitutional argument concerning equal protection in a prior state court proceeding constituted a waiver which precluded this suit. Finally (3) assuming that § 1341 did not constitute a bar and that there was no waiver, nevertheless the federal court should abstain until the state courts are given an opportunity to decide the question.

The plaintiffs-appellants and the defendants-appellees, Cook County, Illinois et al. have filed briefs with this Court. On September 19, 1972 the latter moved pursuant to Circuit Rule 22 for affirmance without oral argument.

We express no opinion with regard to the applicability of § 1341 of Title 28; nor do we believe that discussion of waiver of Constitutional rights is appropriate. We affirm solely on the ground that application of the abstention doctrine was proper in this case.

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As Mr. Justice Harlan indicates in his concurring opinion in *Zwickler* v. *Koota,* 389 U.S. 241, 255 (1967), 88 S. Ct. 391, abstention is appropriate where the order to repair to the state court would avoid the hazard of unsettling some delicate balance in the area of federal-state relationships. *See Louisiana Power & Light Co.* v. *City of Thibodaux,* 360 U.S. 25, 32 (1958), 79 S. Ct. 1070. While *Zwickler* v. *Koota, supra* at n. 4 suggests that the better practice in a case raising a federal Constitutional claim is for the district court to retain jurisdiction, rather than to dismiss, there is ample authority indicating that under the circumstances presented here dismissal is proper.

In *Martin* v. *Creasy,* 360 U.S. 219, 224 (1958), 79 S. Ct. 1034, the Court held that a three-judge court convened to determine the scope of a Pennsylvania statute should have "declined to adjudicate this controversy" because of the potential for (1) "unseemly conflict between two sovereignties," (2) "the unnecessary impairment of state functions," and (3) "the premature determination of Constitutional questions." Moreover, in *Toomer* v. *Witsell,* 334 U.S. 385, 387-392 (1947), the Court upheld the dismissal of suit brought in a federal district court because: "[a]nother . . . statute . . . permits any taxpayer who believes a tax to be illegal for any cause to pay the tax under protest and then sue in a state court to recover amounts so paid."

Illinois' Revenue Act of 1939, (*Ill. Rev. Stat.,* Ch. 120, §§ 482-811), provides a complex method of property tax assessment and collection. Property owners such as the plaintiff are afforded an opportunity to complain of assessment before a tax is levied, *See,* Ill. Rev. Stat., Ch. 120, § 598 (Cum. Supp. 1972). After a tax is owing a further method of challenging the assessment is afforded by

paying taxes under protest. *See, Ill. Rev. Stat.*, Ch. 120, § 675. The record in this appeal indicates that the Mr. Hutter has also filed a challenge to the Illinois Revenue Act in Illinois Courts without paying taxes due. The challenge is currently pending before the United States Supreme Court. *Hutter* v. *Korzen*, No. 71-1419, 40 U.S.L.W. 3596.

In addition to the availability to state statutory remedies it is apparent that suits challenging method and equality of assessment under the equal protection clause of the Federal Constitution have been considered in the Illinois State Courts, and there is no discernible pattern of prejudice against the taxpayer. See e.g. *Peoples Gas Light and Coke Co.* v. *Stuckert*, 286 Ill. 164, *People* v. *Orvis*, 301 Ill. 350, *Bestor* v. *McDonough*, 348 Ill. 624, and *People* v. *Pickard*, 377 Ill. 610.

The decision of the federal district court is affirmed.

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EXHIBIT "B"

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

JOHN A. HUTTER
CLARA N. HUTTER
Class of Taxpayers who own apartment buildings in Chicago and Cook County, Illinois,
Plaintiffs

v.

COOK COUNTY ILLINOIS and P. J. CULLERTON, ASSESSOR,
Defendants.

71 C 2984

MEMORANDUM OPINION

The complaint in this lawsuit purports to state a class action by the plaintiffs as representatives of the class of taxpayers who own apartment buildings in Cook County. Asserting jurisdiction under 28 U.S.C. § 1331 and the Fourteenth Amendment, the plaintiffs allege malfeasance and discrimination on the part of the Assessor of Cook County in fraudulently assessing taxes against the plaintiffs and the other class members in such a manner as to violate the equal protection clause of the Fourteenth Amendment. Specifically, they allege that the Assessor assesses high rise office and apartment buildings at a rate of their fair market value significantly lower than the rate at which the plaintiffs' property is assessed and that other residential property located on the same block as

the building they own (apparently of a similar nature) is likewise assessed at a much lower rate. The defendants move to dismiss the complaint.

The basis upon which the defendants move to dismiss the complaint is Section 1341 of Title 28 of the United States Code. That section states:

> The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

The defendants assert that an efficient and speedy remedy for challenging any real property tax for any year for any reason exists pursuant to *Ill. Rev. Stat.*, Ch. 120, § 675, and that we therefore do not possess jurisdiction over the suit. The Illinois statute states in pertinent part:

> Current taxes on real property shall be payable in 2 equal installments . . .
>
> If any person desires to object . . . to all or any part of a real property tax for any year, for any reason other than that the real estate is not subject to taxation, he shall first pay all of the tax installments due, and such payment shall be accompanied by a writing [in a specified form] . . .
>
> The person paying real estate taxes under protest shall appear in the next application for judgment and order of sale and object to the taxes in relation to which the protest is made, and upon his failure so to do, the protest shall be waived, and judgment and order of sale entered for any unpaid balance of such taxes . . .
>
> In all counties, when the taxpayer appears and files objection, the court shall, after first determining that due notice, if required, has been given to the tax levying unit, hear and determine the matter according to the right of the case and enter judgment for any part of the taxes, or order a refund of any part of the

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> taxes, so paid under protest. Appeals shall lie from such orders of the court as in other cases of objection to judgment and order of sale for taxes . . .

We first note that the plaintiffs' suit is not, strictly speaking, a suit to "enjoin, suspend or restrain the assessment levy or collection" of any taxes. Rather, the plaintiffs merely seek damages for themselves and the class that they represent for the years 1968, 1969, 1970, 1971, and for any other years for which the court may grant relief. Accordingly, the defendants' bald assertion that the suit "is actually one to enjoin the assessment, levy, or collection of real estate taxes" within the purview of the restrictive language of § 1341 cannot stand without further analysis of the history of that statute.

Section 1341 of Title 28 of the United States Code is the codification of the practice of the federal equity courts to deny relief from the collection of taxes by state authorities when a remedy existed in the state courts. Speaking in regard to this equity practice, the Supreme Court stated in *Matthew* v. *Rodgers*, 284 U.S. 521, 525-526 (1932):

> The scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts and a proper reluctance to interfere by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted federal right may be preserved without it. Whenever the question has been presented, this Court has uniformly held that the mere illegality or unconstitutionality of a state or municipal tax is not in itself a ground for equitable relief in the courts of the United States. If the remedy at law is plain, adequate, and complete, the aggrieved party is left to that remedy in the state courts, from which the cause may be brought to this Court for review if any federal question be involved.

It has similarly been held that where there is available an efficient remedy in the state tax agencies and/or courts whereby a taxpayer can contest the imposition of a discriminatory tax, federal courts are without jurisdiction to entertain a suit seeking relief, no matter how the suit is structured or denominated. *Great Lakes Dredge & Dock Co.* v. *Huffman*, 319 U.S. 292 (1943), 63 S. Ct. 1070; *Hackensack Water Co.* v. *North Bergen Township*, 103 F. Supp. 133 (D.N.J. 1952), aff'd. 200 F. 2d 313 (3rd Cir. 1952); *cf., Hillsborough Township* v. *Cromwell*, 326 U.S. 620 (1946), 66 S. Ct. 445. We conclude from a reading of these cases, plus the fact that § 1341 is not restricted to suits seeking only equitable relief, that the doctrine of comity codified in this section prohibits a narrow reading thereof and that this suit, therefore, must be deemed to fall within its restrictions. Accordingly, we must determine if the Illinois statute quoted above would provide the plaintiffs with a plain and efficient remedy.

A review of the Illinois tax statutes relating to the protesting of assessed taxes leads the Court to the conclusion that the plaintiff indeed did possess an adequate and efficient remedy in the state courts, which apparently they have chosen to bypass rather than following the prescribed form of lodging their protest at the time that they paid their taxes. As we read the plaintiff's brief in opopsition to the motion to dismiss, they are not actually contending that they are without a plain and efficient remedy in the state courts but rather are asserting that the requirement that they pay their taxes as a condition precedent to lodging their constitutional complaint against such taxes is, in and of itself, a violation of the Fourteenth Amendment.

Although we are uncertain as to the relationship of the constitutionality of the Illinois statute to the issue of

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whether it is speedy and efficient, we believe that even if such issue is relevant, the plaintiffs' argument is not valid. They cite no authority for the proposition that the constitution is violated by a state's requiring a citizen who believes his tax is improper to pay his tax prior to having his challenge heard. Nor can we even imagine the existence of such authority. Logic dictates that a government which relies significantly upon the property tax as the major source of its revenues must be allowed to continue to collect its taxes even though a challenge has been made either to the tax itself or to its particular application. If the contrary were true, a local government could be brought to a total standstill merely because many of its citizens believed, erroneously or otherwise, that the taxes assessed were improper. The degree of chaos that would result from such set of procedures which the plaintiffs claim are constitutionally required could clearly lead to the total breakdown of all local revenue collections. We conclude that such a system is not constitutionally required and that *Ill. Rev. Stat.*, Ch. 120, § 675, is not unconstitutional. We further conclude that the plaintiffs possessed a plain, speedy, and efficient remedy in the courts of Illinois in which they could have asserted their claims. Accordingly, the complaint must be dismissed pursuant to 28 U.S.C. §1341.

Even if the jurisdictional restrictions of § 1341 do not apply to this suit because a complaint for damages may not technically be deemed as seeking to "enjoin, suspend or restrain the assessment, levy, or collection" of a state tax, we nevertheless believe that the complaint must be dismissed. Faced with a suit very similar to the one involved herein, the Third Circuit has concluded that when a taxpayer possesses an adequate remedy in the state courts for challenging taxes levied against him, his fail-

ure to assert the grounds for challenge in the state proceedings renders stale any subsequent suit in the federal courts based upon those grounds. *Hackensack Water Co.* v. *Township of North Bergen*, 200 F. 2d 313 (3rd Cir. 1952). In that case, the taxpayer argued that it did not have an adequate state remedy to assert its particular ground for challenging its tax assessment and that the personal property taxes assessed for the years 1940 through 1948 were unconstitutional. After concluding that the taxpayer did possess an adequate state remedy and that it had never made any attempt to raise in the state proceedings the type of claim which it was asserting in federal court (although it had raised other grounds in the state court), the Third Circuit concluded that the taxpayer's delay in asserting the alleged unconstitutionality of the tax caused its claims to become stale. The Court stated:

> The above facts convincingly indicate that this action for refund is stale with respect to the balance of the years in dispute. The assessments for those years were finally determined on the single question ever properly before the state courts. It is too late for this taxpayer to now attempt to impeach their validity. Relying upon them commitments have been incurred and paid by township, county and state agencies concerned. The [taxpayer] must be considered to have waived whatever right it possessed to object on constitutional grounds. . . . To permit the type of recovery sought by [the taxpayer] under the circumstances here revealed would seriously and capriciously endanger the ordinary functioning of government agencies. 200 F. 2d at 317.

We believe that the Third Circuit's reasoning is persuasive and that the taxpayers herein are precluded from challenging in this court the constitutionality of taxes

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which they have paid and which they never challenged in the state courts. To allow the plaintiffs to assert their stale claims would be to encourage the bypassing of a state system designed specifically to handle such challenges and the disruption of the orderly processes and functioning of state and municipal governments. Accordingly, the plaintiffs' complaint must be dismissed.

Finally, even assuming that 28 U.S.C. § 1341 does not preclude the taxpayers from bringing this suit and that they could not be legally deemed to have waived their claims by bypassing the authorized state procedures for challenging taxes for any reason, we would nevertheless believe that this Court should abstain from exercising whatever jurisdiction we do possess because of the nature of the claim asserted in the complaint. The complaint challenges the heart of the financing system of a state subdivision. Before the federal courts should interfere with this function so peculiarly oriented to the very existence of a unit of state government, we believe that the courts of the state should be presented with the opportunity to at least hear and rule upon the contentions raised. Even if we have jurisdiction to rule upon the plaintiffs' claims on the merits after the state courts first have been presented with this opportunity, to do so now in the type of lawsuit involved herein would upset the delicate balance of comity long recognized by federal courts and by the Congress in 28 U.S.C. § 1341. Thus, even if the restrictions of § 1341 do not technically apply to this suit, the rationale behind that statute convinces us to refrain from exercising such jurisdiction as we might then possess prior to any proper attempts on the part of the plaintiffs to seek reso-

lution of these issues in the state courts, either through a protest properly lodged with the payment of taxes or by a suit in the Circuit Court challenging the constitutionality of the practices herein complained of.

An appropriate order will enter granting the defendants' motion to dismiss the complaint.

/s/ HUBERT WILL
United States District Judge

Dated: February 9, 1972

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FILED
FEB 12 1973
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, A.D. 1972

No. 72 - 963

JOHN A. HUTTER, et al.,

Petitioners

vs.

THE COUNTY OF COOK,
a Body Political and Corporate, et al., and
P. J. CULLERTON, personally,
Assessor of Cook County

Respondents

BRIEF IN OPPOSITION TO RESPONDENTS
OPPOSITION TO PETITIONERS PETITION
FOR A WRIT OF CERTIORARI

John A. Hutter
3526 N. Marshfield Avenue
Chicago, Illinois 60657
Attorney for Respondents

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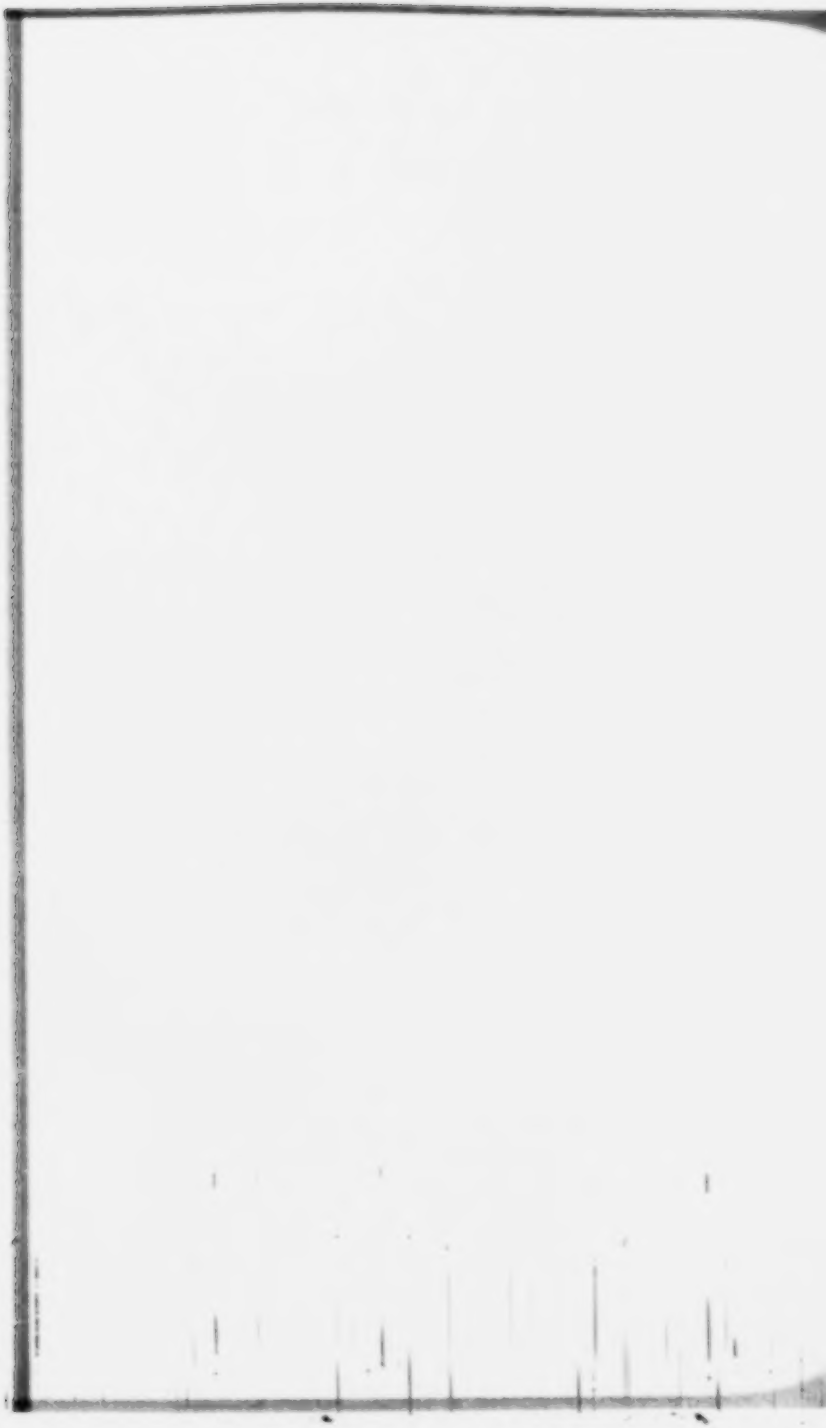
BRIEF IN OPPOSITION TO RESPONDENTS OPPOSITION TO PETITIONERS PETITION FOR A WRIT OF CERTIORARI

ISSUES

The respondents ignore the fact that this is an action claiming that P. J. Cullerton, Assessor for Cook County, deliberately and wantonly violated the Civil Rights of the petitioners in that "he conspired with two or more persons to injure, oppress, threaten and intimidate the petitioners in the free exercise or enjoyment of their rights and privileges



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secured by the Constitution of the United States" - and furthermore, did this "under color of State Law."

This violates the 1968 Amendment to the Civil Rights Act and provides severe penalties for which the Attorney General should seek an indictment.

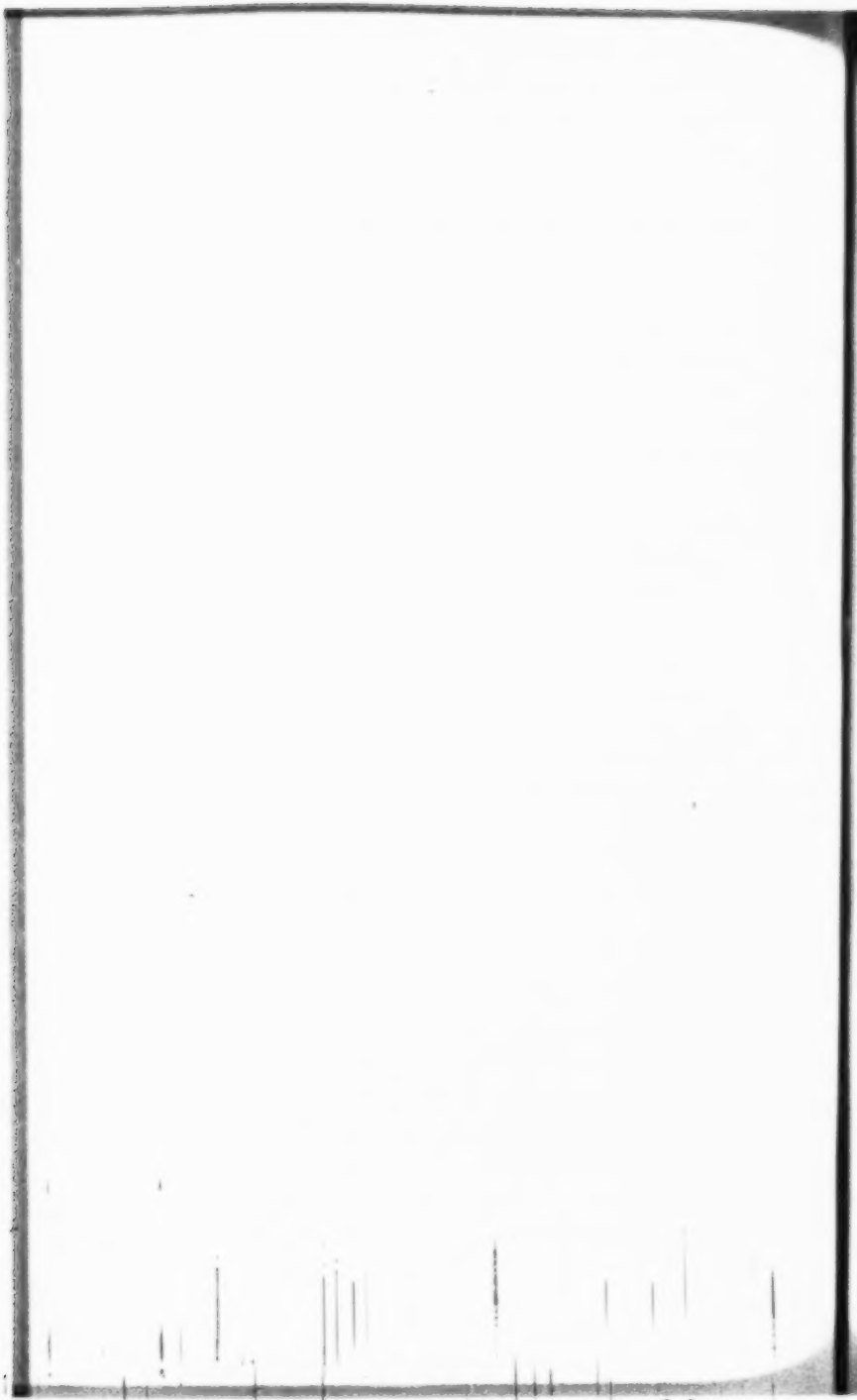
As set forth in Section (d) of petition, the acts of Mr. Cullerton wantonly and deliberately ignored the provisions of both the Federal and State Constitutions.

The question before this Court is simply whether it will protect the Constitutional and Civil Rights of the petitioners or find some excuse for avoiding it.

The Constitution is basic to our survival and this Court must protect all persons within its jurisdiction. If it persistently refuses to do so, our nation is in jeopardy.

This is an action for damages resulting from the blatant contempt, that Cullerton had for the Constitution.

On page 4 of respondent's brief, they claim that Hutter is attempting to challenge the State system. This is absurd. Hutter challenged the State system of taxation through all State Courts. See John A. Hutter et ux. vs. Bernard J. Korzen, et al., No. 71-1419 in which Mr. Justice Douglas dissented in the dismissal for untimely filing. This applied to Hutter's 1968 taxes; also study a similar appeal for Hutter's 1969 taxes, wherein he also claims the State statute requiring payment in full of taxes before



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a taxpayer may have his day in Court, is repugnant to the U. S. Constitution. This appeal is being filed herewith. It certainly is on time for the Illinois Supreme Court issued its order of denial on January 25, 1973.

This action is simply a claim for damages caused by Cullerton violating the Civil and Constitutional Rights of this large class of Illinois residents.

On page 5 the respondents quote Judge Will. "The rationale behind the Statute convinces us to refrain from exercising such jurisdiction as we might then possess prior to any proper attempts on the part of the plaintiffs to seek resolution of these issues in the State Courts." Of course, Hutter did just that as indicated supra. Judge Will referred to Section 1341. However, that provision was only part of Hutter's basis for Federal Court action. In complaint, he refers to "and other sections applicable".

Certainly, a Federal Court has jurisdiction under all circumstances where violation of Civil Rights are alleged.

Under no circumstances does a Federal Court have the right of abstention where Civil Rights violations are involved.

The respondents of course, ignore this on pages 5, 6, 7.

On page 8, they talk of form.

All Federal rules stress the proposition that form is of little importance. Justice is.

When our government was set up, the States agreed that they would forever be

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bound by the Federal Constitution. In enforcing the protection of that Constitution, there is absolutely no "conflict between two sovereignties."

The Civil Rights Act was specifically enacted by Congress to protect citizens from State employees and officials who violate the Constitution in dealing with those within their jurisdiction.

For reasons set forth in both briefs filed by petitioners, the Court is asked to grant them a Writ of Certiorari.

Respectfully submitted,

John A. Hutter
3526 N. Marshfield Avenue
Chicago, Illinois 60657
Attorney for Petitioners

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FILE COPY

FILED
MAR 5 1973
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, A.D. 1972

No. 72-963

JOHN A. HUTTER, et al.,

Petitioners

vs.

THE COUNTY OF COOK,
a Body Political and Corporate, et al., and
P. J. CULLERTON, personally,
Assessor of Cook County

Respondents

PETITION FOR REHEARING

John A. Hutter
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Attorney for Respondents

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, A.D. 1972

No. 72-963

JOHN A. HUTTER, et al.,

Petitioners

vs.

THE COUNTY OF COOK, ILLINOIS
a Body Political and Corporate, et al., and
P. J. CULLERTON, personally,
Assessor of Cook County

Respondents

PETITION FOR REHEARING

The petitioners have appealed eight cases to this Court that have been heard by all the various Courts, State and Federal, in Illinois and Wisconsin, and others are in process.

These cases have all involved Civil Rights, Constitutional Rights of Equality, due process and the right of appeal.

In all cases this Court has refused to consider the appeals and has denied these petitioners the protection of these basic rights supposedly guaranteed by our Bill of Rights, the Federal Constitution.

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All of these appeals that have been denied without hearing or comment, involve property rights of the great middle class, the silent majority that constitutes the backbone of our nation; they involve the relationship of the individual resident of this nation with local town boards, cities, counties and other political subdivisions; they involve also the denial of rights provided by the State Constitutions of Illinois and Wisconsin. While these are the only States involved here, it may be presumed that similar situations would apply in every other State in our union.

There is a definite trend to turn all problems back to the States on the assumption that the local community is in a better position to handle its local affairs than the Federal government.

The town meeting of New England was able to cope with the comparatively simple problems of the past with its homogeneous "WASP" population. However, consider the justice dispensed in the witch trials of Salem.

With our frightening population explosion; our relative decrease in "WASP" percentage of our population; our intense industrial development; our relative decrease in natural resources; our pollution and our urban concentration; only the national direction of the Federal government can cope with these problems.

Aided and abetted by this Court, most units of State government utterly disregard the safeguard of rights which our Federal Constitution was intended to protect.

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Gilbert and Sullivan in "Pinafore" provides us with an appropriate song "Let the punishment fit the crime." Murder and lesser State felonies are almost treated in the class of misdemeanors while Federal offenses, which do not necessarilly effect life or property, seem to usually have a penalty of 10 years in prison or a $10,000. fine.

Consider the fate of Appeals Judge Otto Kerner, former governor of Illinois; general in the Armed Forces in World War II and generally considered an outstanding public servant who has served his country well. What did he do? To be a politician in Illinois and maintain the proper "face" it was necessary to have owned or controlled race track stock at one time or another. Judge Kerner incidentally, acquired some of this magic stock and sold it later at a profit. What else? Politicians don't usually take a loss and survive. The problem of getting reelected is very expensive. So, for doing this customary act, Mr. Kerner was convicted and faces 85 years in jail. Mr. Kerner was supposed to have moved some racing dates around. If true, who was injured? Certainly not the citizens of Illinois who benefited from fine legislation enacted during his term as governor.

We all desire the highest standard of morality in our elected officials. However, if we do, we must provide them the means of conducting their campaigns without the need of millions of dollars of campaign contributions. (Governor Walker of Illinois is in the hole for one million dollars deficit in campaign costs). Salaries must be adequate so an elected official can provide for his family to the

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same extent he could in a non political career.

This Court probably approves of the severe penalty meted out to Judge Kerner who hurt no one. Yet in this petition for Certiorari, where these petitioners seek justice for a hundred thousand Grade A residents of Illinois, who are for the most part, hard working, law abiding, thrifty, self supporting and substantial taxpayers, this Court says:

"Go away, we are too busy to bother with you; ask the States to look after your needs; if they don't, then it is just too bad."

This trend of the executive and judicial branches of Federal government to pass the buck to the States simply will not work and it will deny justice.

This Court will never cut down its case load by brushing aside nine out of ten appeals for justice that only this Court can determine. All it will result in, will be more and more demand on the Court for the solution of basic Constitutional problems. If the Court will hear and decide every case on its merits, it will soon find that its case load will relatively decrease.

Governor Walker today estimated that 140,000 Illinoisans would suffer because of cutbacks in Federal Social Service funding. He also charged that revenue sharing funds - which are given with virtually no strings attached - could be misused; to buy new office furniture for a mayor, for example.

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Petitioner's daughter, Marion, County Case worker, must face 100 new applicants, (95% white) from all over the nation, who come to her office every day seeking Public Aid because Illinois, like New York and California, is far more generous than other States. This is occurring during a period of "prosperity" the like of which we will probably never see again. Only a system of relief which is entirely Federal like Social Security, Medicare, etc. will solve the problem. Every person in every State would be treated alike. Our urban problems would diminish for poor people would disperse and seek the place to live where their check bought more.

It is also absolutely essential that the Federal government, through this Court rigidly determines that every employee of government, obeys the provisions of our Constitution or suffer severe penalties.

The defendants in this petition have blatantly laughed at and ignored both the Federal and the State Constitution of Illinois. They have caused thousands * of taxpayers to lose their life savings. The City of Chicago is awaiting the replenishment of funds from the Federal government so it can bulldoze thousands of apartment buildings so the land may be parceled out to generous contributors to build new highrises.

Will the Court reconsider and hold that the petitioners are entitled to one half billion dollars damages resulting from the blatant disregard of their Constitutional and Civil Rights by the conspiring defendants?

Must we tell our children that "Our Constitution will not protect them?"

Respectfully submitted,
John A. Hutter
-5- Attorney for Petitioners

* March 1, 1973 The federal Grand jury returns 8 indictments against the prime-past associates

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